

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

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SAN FRANCISCO 94142-0603**INITIAL STATEMENT OF REASONS****PROPOSED CHANGES TO REGULATIONS OF THE DIVISION OF OCCUPATIONAL SAFETY
AND HEALTH IN THE CALIFORNIA CODE OF REGULATIONS**

Title 8, Chapter 3.2

Subchapter 2. Regulations of the Division of Occupational Safety and Health
Article 2. Permits - Excavations, Trenches, Construction and Demolition and the
Underground Use of Diesel Engines in Work in Mines and Tunnels**Proposed Amendments to Section 341 Permit Requirements and Section 341.1 Issuance of Permits****PROBLEM ADDRESSED AND SUMMARY**

Pursuant to Labor Code sections 60.5 and 6308, the Division of Occupational Safety and Health ("the Division") of the Department of Industrial Relations is charged with the administration and enforcement of the provisions of the California Occupational Safety and Health Act, commencing with Labor Code section 6300, as well as other provisions of law impacting upon the health and safety of employees in the State of California. The Division has initiated this rulemaking to revise the current system of safety permits issued by the Division for certain types of hazardous work, mainly in the construction industry.

Pursuant to California Labor Code Sections 6500 through 6503 and Title 8, California Code of Regulations ("8 CCR") Sections 341 and 341.1, employers must obtain permits from the Division for a series of listed high-hazard work activities. The permit application process notifies the Division of the existence of high-hazard jobsites and gives the Division an opportunity to interact with the permit applicant via a permit safety conference so that information can be exchanged and other measures can be taken to increase the safety of the permitted work activities. The permit application process is proactive, and promotes compliance with safety regulations on jobsites where a permit has been issued.

While the Division has issued permits for most types of high-hazard work activities for many years without controversy, problems have arisen in connection with the issuance of permits to construct or dismantle buildings and other structures over three stories in height. The provisions of 8 CCR Sections 341 and 341.1 call for a separate permit to be issued for each project site where these activities will take place. These "single project" permits can be issued to both project administrators (general contractors or other parties with broad authority over the jobsite) and subcontractors with authority only over their own operations at the site.

However, the California Occupational Safety and Health Appeals Board has held in various of its Decisions After Reconsideration¹ over the years that sections 341 and 341.1 do not authorize the Division to require the project administrator of a jobsite to obtain a permit *as long as any one contractor has obtained a permit*, and that *only one permit need be obtained for a jobsite* subject to permit requirements. See, e.g., Fluor Daniel, Inc. Cal/OSHA App. 90-948, Decision After Reconsideration (Nov 20, 1991).

In the Division's view, these Decisions After Reconsideration have eroded the original intent of sections 341 and 341.1, and have engendered confusion and conflict about the issuance of permits. As mentioned above, some project administrators continue to obtain Cal/OSHA permits for projects they oversee. However, other project administrators have left this responsibility to subcontractors. While these subcontractors may perform portions of the permit-required activities, they may lack sufficient familiarity with the overall project, generally. In such situations, the Division may pose questions during a permit safety conference that are beyond the knowledge or the scope of work performed by these subcontractor applicants. If the applicant for a permit has inadequate knowledge of the overall project, the Division's ability to conduct an effective permit safety conference, as called for by Labor Code Sections 6502 and 6503, is impacted. In addition, the subcontractor who obtains a permit for a given project often completes its own permitted work before the permitted project is completed. When that subcontractor leaves the jobsite, the project is left without a permit holder.

The Division has learned from experience that, where a project administrator and one or more of the subcontractors apply for permits, the administration of permit requirements and the evaluation of the safety of projects are carried out more effectively from the point of view of both the Division and the contractors.

Accordingly, the following changes are proposed to sections 341 and 341.1 to address the issues described above and to clarify the responsibilities of the various employers involved with the permit process. These proposed changes to Sections 341 and 341.1 ("the Proposed Rulemaking") create a clear distinction between the "Project Administrator" and the subcontractors who perform permit-required activities by requiring them to obtain different types of permits. Project Administrators will be required to obtain Project Permits. Conversely, subcontractors who perform permit-required activities, but who have no broad authority over the entire project, will be required to obtain Annual Permits.

Additional proposed changes will rectify minor problems that have occurred in the issuance of permits over the years.

SPECIFIC PURPOSE OF ADOPTION/FACTUAL BASIS

I. Section 341. Permit Requirements.

The Division proposes a substantial reworking of its permitting process. Accordingly, it proposes to delete the text of existing text of Section 341 to replace it with new language explaining: (a) the Scope and Application of new Section 341; (b) the definitions of terms used in the permit regulations; (c) the basic permitting requirements; (d) work activities subject to permitting requirements and the types of permits required for specific activities; and (e) exceptions to permitting requirements.

¹ The California Occupational Safety and Health Appeals Board is the agency of the State that hears appeals from citations and orders the Division issues. The Appeals Board issues precedential Decisions After Reconsideration, or "DARS", that explain what particular OSHA regulations mean in the context of the specific cases that come before the Appeals Board.

Section 341(a): Scope and Application.

New subsections (a)(1) through (a)(4) provide a brief overview of the Division's permit program, since they discuss the scope of the permit regulations, the purpose of the permit process and the types of permits issued. These subsections serve as an introduction to the permitting process for the regulated public.

Section 341(a)(1).

By way of introduction to the permitting process, Section 341(a)(1) specifies the subjects covered in Article 2 (Subchapter 2 of Chapter 3.2 of 8 CCR) governing permits. Specifically, Subsection (a)(1) indicates that Article 2 will outline the work activities which require permits, describe what actions permit holders must take to comply with permit requirements, and specify the types of permits available and how to apply for a permit.

Section 341(a)(2).

This subsection informs the regulated public that the purpose of a permit is to provide notice to the Division when an employer will undertake permit-required activity, and that the permit process allows the Division an effective means of ensuring that the permitted activity will be performed safely.

Section 341(a)(3).

Section 341(a)(3) lists the two types of permits: Annual Permits and Project Permits. For clarity, Section 341(a)(3) indicates that definitions for both types of permit will appear in Section 341(b) and further details regarding the permits will be set forth in subsections (c), (d) and (e).

Section 341(a)(4).

Again, to make the Proposed Rulemaking as "user-friendly" as possible, Section 341(a)(4) would alert readers that details of the permit-application process are found in section 341.1.

Section 341(b): Definitions.

To aid in comprehending the requirements of Article 2, Section 341(b) would set forth the definitions of ten terms that appear in the Proposed Rulemaking, as follows:

- (1) An "Annual Permit" is a permit that would allow an employer to conduct a specified activity at any jobsite for a period of one year.
- (2) The Proposed Rulemaking would include "Climbing a fixed tower crane" among the activities for which a permit is required. As defined in Section 341(b)(2), that terms means altering the height of the revolving section of a tower crane by adding or removing tower sections with the use of a climbing frame.
- (3) To ensure that members of the regulated public know when they are engaged in activities that require a permit, Section 341(b)(3) explains that to "engage in a permit-required activity" means either having employees who actually perform that activity or acting as a project administrator at a site where a permit-required activity is being performed. A note following Section 341(b)(3)

explains that the definition of “permit-required activity” is provided later in the Proposed Rulemaking.

- (4) Section 341(e) excepts “emergency repair work to underground facilities” from the permit requirements of the Proposed Rulemaking. To ensure that the regulated public understands what the scope of this specific exception is, Section 341(b)(4) defines “emergency repair work to underground facilities” as the unscheduled repair or replacement of pipes or other underground structures for the purpose of protecting life or property.
- (5) Since a permit is required to perform specified activities on any building or other structure more than 36 feet in height, Section (b)(5) clarifies that a structure’s “height” is the distance from the tip of the structure, including any parapet walls, mechanical rooms or other penthouse structures, to the lowest point of the surrounding grade or ground level below. Mechanical screens, antennas, chimneys, flag poles, and similar attachments are not to be considered in determining the height of a structure. This definition is necessary to remove ambiguities in determining the height of a structure, since permitting requirements are triggered by a structure’s height.
- (6) To ensure the safety of a permitted project, it is important that the Division have notice of permitted activity and that the Division undertake a project-safety evaluation before any permitted work commences. Accordingly, Section 341(b)(6) would specify that to “hold” a permit means acquiring a valid permit prior to the start of permitted work.
- (7) A “permit-required activity” is an activity described in Section 341(d) for which a permit is required by Article 2.
- (8) The term “Project Administrator” refers to persons or entities like general contractors, prime contractors, owners/builders, joint ventures, and construction managers who have overall onsite responsibility for the planning, quality, management or completion of the erection or demolition of a structure.
- (9) A “project permit,” as compared to an “annual permit”, is a permit issued to an employer that authorizes the employer to conduct permit-required activities at the locations specified in the permit.
- (10) Finally, a “structure” is any creation by human activity of a piece of work, formation, or series of parts joined together, including but not necessarily limited to: buildings, falsework, scaffolding, bridges, elevated highways, chimneys, dams, powerhouses, smokestacks, silos, billboards, outdoor signs, transmission or communications towers, and tanks or tank towers.

This definition is necessary to make it clear what a “structure” is for the purpose of determining the application of the permit requirements. The list contains structures regarding which there have been questions or confusion in the past.

Section 341(c): Basic Permit Requirement.

Proposed Section 341(c) identifies the two types of permits, the Project Permit and the Annual Permit, and sets forth the requirements for each.

Section 341(c)(1)(A).

This subsection states that a Project Permit must be issued for the project before work can begin. This subsection is necessary to clarify that permit issuance is a condition precedent to lawful permitted work activity. This provision also fosters workplace safety, since the permitting process alerts the Division to the existence of permit-required activities and also provides a mechanism to evaluate workplace safety issues for the permitted project before work commences.

Section 341(c)(1)(B).

This subsection states that only one Project Permit is required for a particular jobsite as long as the permit holder continues to act as Project Administrator. On large-scale projects there may be a partnership or joint venture involving multiple entities that could act as the Project Administrator; the decision regarding who will act as Project Administrator may be simply a business decision among multiple co-equal parties. No second employer would be required to obtain a Project Permit, unless the employer holding the Project Permit ceases to act as the Project Administrator. This subsection is necessary to make clear that only one valid Project Permit is required per worksite, even if more than one employer at the worksite fits the description of a Project Administrator.

Explanatory NOTE following Section 341(c)(1)(B).

A new Note directs the reader to new subsections (f) and (g) of Section 341.1 of Article 2 for additional details regarding the scope of Project Permits. Section 341(f) contains a list of permit-required activities that may be included in a single Project Permit; and Section 341(g) contains conditions for issuance of a single Project Permit for erecting, climbing and dismantling of a fixed tower crane.

Section 341(c)(2)(A).

This subsection is necessary to make clear that the issuance of a Project Permit does not relieve another entity required to hold an Annual Permit from that obligation. Likewise, it is necessary to make clear that a Project Permit holder who engages in permit-required activities at another project, but does not act as Project Administrator, must obtain an Annual Permit for work at that other site.

Section 341(c)(2)(B).

This subsection would specify when the Annual Permit must be obtained - namely, once per year. It also provides that the permit holder must notify the Division prior to commencement of any work subject to the requirements of the Proposed Rulemaking at a new work site. Again, when a permit holder notifies the Division of permitted work, the Division has an opportunity to address safety concerns.

Section 341(d): Work Activities Subject to Permit Requirements and the Types of Permits Required to Conduct the Activities.

Labor Code section 6500(a) sets forth the general types of work for which a permit shall be required. Proposed Section 341(d) would make that Labor Code section more specific, in that it lists the work activities that would require permits under the Proposed Rulemaking. This subsection is necessary to flesh out Labor Code Section 6500(a) and to clarify the permitting process.

Section 341(d)(1).

Proposed Section 341(d)(1) identifies the erection, climbing or dismantling of a fixed tower crane as a work activity for which a contractor must hold a Project Permit, even though that contractor may not generally be the Project Administrator. This requirement reflects the hazardous nature of working with tower cranes.

Explanatory NOTE NO. 1 following Section 341(d)(1).

Note No. 1, which is inserted for the purpose of clarity, would direct readers to Section 341.1 of the Proposed Rulemaking for additional details on Project Permit requirements for fixed tower cranes.

Explanatory NOTE NO. 2 following Section 341(d)(1).

Note No. 2 would direct the reader to Section 344.70 of 8 CCR. That section requires a different permit for the operation of a fixed tower crane, once it is erected. Note No. 2 should prevent confusion between the permit requirements for tower crane erection under Article 2 and the tower crane operation requirements set forth in Section 344.70. The text of Note No. 2 comes verbatim from the Note to existing section 341.1(b)(2).

Section 341(d)(2).

Proposed Section 341(d)(2), adapted from existing Section 341(a)(4), identifies the use of diesel engines in mines and tunnels as another activity for which a Project Permit is required, even though the applicant may not be the Project Administrator on the jobsite. The permit must be obtained prior to placing the diesel engine underground. This provision is necessary for consistency between the Proposed Rulemaking and Labor Code section 6500.

Section 341(d)(3).

Proposed Section 341(d)(3), adapted from existing Section 341(a)(3), identifies the demolition or dismantling of buildings or structures more than 36 feet in height as an activity requiring a Project Permit. Moreover, that section would also require that all other employers directly engaged in demolition or dismantling activities hold an Annual Permit. This subsection is necessary to ensure that there is always a Project Administrator wherever a building or structure more than 36 feet in height is being demolished, and that the Division will have the opportunity to review plans during the process of issuing a Project Permit.

Section 341(d)(4)(A) – (d)(4)(E).

Proposed Section 341(d)(4) lists regulated work activities generally performed during the construction of a building more than three stories or 36 feet in height. The work activities specific to construction are set forth in proposed subsections (d)(4)(A) through (d)(4)(E). All of the work activities listed involve significant hazards to employees, and therefore necessitate the issuance of a permit so that the Division becomes aware that the job is planned and can discuss job safety with the applicants.

Section 341(d)(4)(A).

This subsection specifies “erection and placement of structural steel or structural members made of materials other than structural steel” as activity subject to permit requirements.

Explanatory NOTE following Section 341(d)(4)(A).

This Note explains that reinforcing bars used in reinforcing concrete construction are not considered structural steel or members for the purposes of (d)(4)(A). Placement of reinforcing bars in concrete construction is a less-hazardous work activity than structural steel erection and therefore is not subject to the permitting requirements of this section.

Section 341(d)(4)(B).

This subsection specifies installation of metal decking or decking made of substitute materials as a work activity subject to permit requirements.

Section 341(d)(4)(C).

This subsection specifies installation of curtain walls, precast panels, or fascia as activities subject to permit requirements.

Section 341(d)(4)(D).

This subsection specifies forming and placement of concrete structures or concrete decks on steel structures as a work activity subject to permit requirements.

Section 341(d)(4)(E).

This subsection specifies installation of structural framing, including roof framing, and installation of panelized roof systems as work activities subject to permit requirements.

Explanatory NOTE after Section 341(d)(4)(E).

This Note explains that interior partitions are not considered part of “structural framing” for the purposes of (d)(4)(E). The construction of non-bearing partitions is not as hazardous as structural framing, and is therefore not subject to permitting requirements.

Section 341(d)(5).

Proposed Section 341(d)(5) identifies two work activities for which an employer may hold either an annual permit or a project permit.

Section 341(d)(5)(A).

For example, proposed Section 341(d)(5)(A) identifies the construction of excavations or trenches 5 feet or deeper, into which a person is required to descend, as a work activity for which an Annual Permit is required. Unlike the work activities listed in proposed subsection 341(d)(4), excavation work is often done in the street or in other locations unrelated to any construction project, and without any Project Administrator who has overall control of the site. Specialty Contractors performing this work activity are currently required to hold an Annual Permit under existing subsections 341(a)(1) and 341.1(f)(1)(B). This Annual Permit requirement has also been carried over to proposed section 341(c)(2)(A) above.

Explanatory NOTE following Section 341(d)(5)(A).

This Note clarifies the meaning of “descend” in proposed Section 341(d)(5)(A) by defining the term as entry into any part of the excavation once it has attained a depth of 5 feet or more. This Note is necessary because of the substantial cave-in hazard posed by a trench or other excavation. The laws of soil mechanics are inexorable, and when the soil around an excavation collapses, it can engulf persons in the excavation even if they are standing on sections of pipe or other structures at less than the full depth of the excavation. In the event of an excavation collapse, the pipe or other structure does not offer any protection to a person standing on top. This proposed change is necessary because permit applicants have in the past confused the issues of excavation depth and the depth of employee entry.

Section 341(d)(5)(B).

Proposed Section 341(d)(5)(B), identifies the erection and placement of scaffolding, vertical shoring or falsework as the second work activity subject to the requirements of new Section 341(d)(5). Employers performing this work activity in the past have been required to hold valid Annual Permits and to notify the Division prior to the start of any work. The proposed Section 341(d)(5)(B) is necessary to preserve and codify that practice in the Proposed Rulemaking.

Section 341(e): Exceptions to Permit Requirements.

Proposed Section 341(e) identifies work sites and types of employers that have historically been exempted from permit requirements. No new groups of employers are included in, or excluded from, the permitting requirements created by the Proposed Rulemaking because of any proposed amendments in this new Section 341(e). All changes in the Proposed Rulemaking will clarify existing exemptions that have caused confusion in the past.

Section 341(e)(1).

New Section 341(e)(1) is taken verbatim from existing Section 341(b)(1) pertaining to exempt governmental bodies, with additional language to explicitly provide that the United States government, its officers and agencies are exempt from the permit requirements of the Proposed Rulemaking. While Federal agencies have always been exempt from existing permit requirements, this proposed change is

necessary because the failure to name the United States government explicitly in existing Section 341(b)(1) has caused confusion in the past.

Section 341(e)(2).

New Section 341(e)(2) is taken verbatim from existing Section 341(b)(2) pertaining to exempt public utilities.

Section 341(e)(3).

New Section 341(e)(3) is taken verbatim from existing Section 341(b)(3) pertaining to exempt emergency repair work. “Emergency repair work to underground facilities” is now expressly defined in new Section 341(b)(4).

Section 341(e)(4).

Section 341(e)(4) is taken verbatim from existing Section 341(b)(4). It pertains to excavations and trenches into which a person is not required to descend, either during the excavation process or during its final use. Shafts drilled into the ground for piles or caissons are common examples of excavations that generally do not require a person to descend during excavation or final use, and therefore do not pose the same risks as excavations into which employees must descend.

Section 341(e)(5).

Section 341(e)(5) is taken verbatim from existing Section 341(b)(5) pertaining to construction of graves.

Section 341(e)(6).

New Section 341(e)(6) is adapted from existing Section 341(b)(6), pertaining to swimming pools. The proposed change would add “excavation for” to the existing language “construction of swimming pools”. This proposed change is necessary to make clear the exemption from permit requirements for any excavation work related to the construction of a swimming pool, including any trenching work necessary for water lines, drains or electrical conduits.

Explanatory NOTE following Section 341(e)(6).

Pursuant to Labor Code section 6500(b), this new Note explains that the work activity of constructing motion picture, television, or theater stages and sets does not require a permit unless the requirements set forth in that Section 6500(b) are met. The Division has inserted this Note following Section 341(e) since most members of the regulated public would probably look here to check for permit exemptions or restrictions.

II. Section 341.1. Issuance of Permits.

Section 341.1 sets forth the procedures and requirements for obtaining a Project Permit or Annual Permit when required by Section 341. Because of the reformulation of the permitting process proposed in Section 341, it is necessary to make numerous revisions to Section 341.1. Some of the proposed revisions are minor and improve clarity without affecting substance; other revisions make substantive changes. So that the regulated public can more easily track the proposed amendments, the Division

proposes to delete existing Section 341.1, in its entirety, and to replace it with the new proposed language.

Section 341.1(a): Where to Submit Permit Applications.

Existing Section 341.1(a) is proposed for deletion because its general remarks do not match the organization of the proposed Section 341.1, which differentiates between types of permits throughout the section. Subsections (a)(1) through (a)(3) summarize the offices where the Division will issue Project Permits, Annual Permits and permits for the operation of diesel engines in mines and tunnels.

Section 341.1(a)(1).

Proposed Section 341.1(a)(1) requires that all applications for a Project Permit be submitted to the Division's district office that has geographical jurisdiction over the project site. This rule would allow the district office staff, who might later need to inspect the jobsite, to have direct notice of the project for which a permit is sought. Moreover, this rule would also prevent applicants from "shopping" to find a district office that may grant a permit application that another district office has already denied.

Section 341.1(a)(2).

Proposed Section 341.1(a)(2) requires that all Annual Permits be obtained by the Division's office in the Cal/OSHA district where the applicant's headquarters are located. If an applicant for an Annual Permit has no California headquarters, that applicant must submit the application to the Division's headquarters in Oakland. Since an Annual Permit is not project specific, this rule enables most applicants to submit applications for Annual Permits at the district office most convenient to their headquarters. As with the rule for Project Permits, Section 341.1(a)(2) would also prevent applicants from submitting applications to more than one district office in the hope of having the application granted.

Explanatory NOTE following Section 341.1(a)(2).

This explanatory note, adapted from existing Section 341.1(a), tells the permit applicant where forms are available and generally where district offices can be located. It is added to address frequently asked questions.

Section 341.1(a)(3).

Proposed Section 341.1(a)(3) requires that all permits for the use of diesel engines in mines and tunnels be obtained from the nearest district office of the Division's Mining and Tunneling Unit. The proposed change is necessary to ensure that all permit applications for the use of diesel engines underground are reviewed by Division personnel that have training and experience in this type of work. Persons with such training and experience might not generally be found in the Division's other district offices.

Explanatory NOTE following Section 341.1(a)(3).

This explanatory note would be added merely to inform applicants to obtain applications for underground diesel permits at the nearest office of the Division's Mining and Tunneling Unit.

Section 341.1(b): General Requirements for Permit Applications.

The proposed changes to Section 341.1(b) preserve existing requirements, and add some new requirements, regarding information employers must include in their applications. All the information on the application form enables the Division to conduct a meaningful review of permit applications.

Section 341.1(b)(1).

Proposed Section 341.1(b)(1) would list the information to be included on all permit applications. The same information has already been required in the Division's existing permit application. Thus, an applicant must provide all the customary contact information on an application. The applicant must have and provide the number of a valid license issued from the Contractors State License Board, and must show proof of workers' compensation coverage, if applicable. A note following Section 341.1(b)(1) states that the Division is not equipped to accept cash or credit card payments. Codifying these requirements gives advance notice to permit applicants of the information they will need to complete the permit application, if the application is filled out as part of a permit appointment and safety conference in the Division's district office. Proposed Section 341.1(b)(1) would retain existing language from Section 341.1(b)(2) requiring the permit applicant to certify that: he or she has knowledge of the occupational safety and health standards that apply to the permit-required activity; and that he or she will comply with those standards and any lawful orders of the Division in regard to those standards. In addition, the Proposed Rulemaking would add the word "she" to the text of (b)(2) to make it non-gender specific. Finally, Proposed Section 341.1(b)(1) would retain the second requirement of existing Section 341.1(b)(2) that the permit applicant certify that the work practices, means and methods to be used in the permit-required activity will provide a safe and healthful workplace. By requiring applicants to so certify, the Division essentially puts them on notice of these requirements.

Section 341.1(b)(2).

In addition, the applicant must inform the Division of the location or locations of a jobsite for Project Permits, as well as the anticipated dates for starting and completing the project. The Division needs this information to determine if the applicant has submitted the application to the correct district office, and to know where to go should it need to conduct an inspection of the jobsite. In addition, the applicant must describe the permitted work activity in sufficient detail to allow an effective safety evaluation of the proposed work.

Section 341.1(c): Additional Application Requirements for Permits for Underground Use of Diesel Engines in Mines and Tunnels and Permits for Fixed Tower Cranes.

Section 341.1(c) would be titled "Additional Application Requirements Applicable to Permits for Underground Use of Diesel Engines in Mines and Tunnels, and to Permits for Fixed Tower Cranes" to reflect its new content.

Section 341.1(c)(1).

Currently, Section 341.1(b)(1) describes the special permit provisions for underground use of diesel engines. The Proposed Rulemaking would make minor grammatical and stylistic changes to make the section more-easily understandable. For example, a portion of the title sentence, "Special provisions" would be deleted. In the second sentence of new Section 341.1(c)(1), the proposal would amend the subsection by removing the words "in work" from the existing phrase "for the underground use of diesel

engines in work in mines and tunnels”. Diesel engines produce carbon monoxide regardless of their function underground, and not all functions may be directly linked to mining or tunneling “work” but may be used to generate power for maintenance or other ancillary operations. This proposed substantive change is necessary to make clear that a permit is necessary for any and all use of diesel engines underground in mines and tunnels.

Section 341.1(c)(1)(A).

This subsection requires applicants to furnish complete details and specifications of each diesel engine and exhaust purifying device. The Division needs this information to assess safety concerns prior to permitting.

Section 341.1(c)(1)(B).

Existing Section 341.1(b)(1)(B) is proposed for amendment at new Section 341.1(c)(1)(B) to change the wording “Location of mine” to “Location of mine or tunnel”, and to add the word “of” between “details” and “how”. These proposed changes are necessary to correct omissions in the original standard.

Section 341.1(c)(1)(C).

Section 341.1(c)(1)(C) contains, without change, the language found currently in Section 341.1(b)(1)(C).

Section 341.1(c)(1)(D).

Section 341.1(c)(1)(D) contains, without change, the language found currently in Section 341.1(b)(1)(D).

Section 341.1(c)(1)(E).

Section 341.1(c)(1)(E) contains, without change, the language found currently in Section 341.1(b)(1)(E).

Section 341.1(c)(1)(F).

Existing Section 341.1(b)(1)(F) is proposed for amendment at new Section 341.1(c)(1)(F), to change the wording “where a representative of the Division may make tests of the diesel’s exhaust gases” to “may conduct tests of the diesel exhaust gases and mechanical conditions affecting exhaust gas emission.” The proposed changes are necessary to allow the Division to identify mechanical conditions on a diesel engine that could affect diesel exhaust emission after the tests have been completed, and could rapidly create dangerous emissions before subsequent tests could uncover such a hazard.

Section 341.1(c)(2).

No substantive changes to existing Section 341.1(b)(2), now to be set forth as subsection (c)(2)(A), are proposed. The title sentence “Special Provisions—Erection, Climbing and Dismantling of Fixed Tower Crane” would be replaced by “Permits for Erecting, Climbing and Dismantling of Fixed Tower Cranes” so that the reader immediately understands that the requirements that follow are permit requirements, rather than some unrelated “special provisions” for safety on tower cranes. The existing wording “In the case of a fixed tower crane, the employer must, in addition to the other information required by this

article, provide a statement” has been removed and the rest of the paragraph has been retained as proposed Section 341.1(c)(2)(A) with no substantive changes.

Explanatory NOTE following Section 341.1(c)(2)(A).

Conforming punctuation changes are proposed to the existing Note after existing Section 341.1(b)(2), to fully capitalize the word “Note”, and to capitalize the initial letter in “Sections 344.70 et seq.”

Section 341.1(c)(2)(B).

It is proposed that Section 341.1(c)(3) which reads “The holder of a permit for the erection of a fixed tower crane issued pursuant to this article shall” be removed and replaced with a new Section 341.1(c)(2)(B). The proposed wording “The applicant will” would precede the rest of the sentence that was removed, which would then read “The applicant will notify the Division of the following dates and times:” which would introduce subsections (c)(2)(B)(i) through (iv).

Section 341.1(c)(2)(B) subsections (i) through (iv).

No substantive changes to existing Section 341.1(b)(3)(A) through (b)(3)(D) are proposed; they would be renumbered (c)(2)(B)(i) through (c)(2)(B)(iv).

Explanatory NOTE following Section 341.1(c)(2)(B)(iv).

Conforming punctuation changes are proposed to the existing Note after existing Section 341.1(b)(3), to fully capitalize the word “Note”, and to not capitalize the initial letters in “district office”.

Section 341.1(d): Safety Conference for Project Permits and Annual Permits.

Existing Section 341.1(c) describes the safety conference that is held in the Division’s district office as part of the Project Permit or Annual Permit process. The Proposed Rulemaking would renumber existing Section 341.1(c) as Section 341.1(d) and re-title it “Safety Conference for Project Permits and Annual Permits”. This proposed change is necessary to conform to the usage of the word “permit” elsewhere in the Proposed Rulemaking; and to promote the central theme that there are two separate and distinct permit procedures for the Project Permit and the Annual Permit.

Section 341.1(d)(1).

The word “employer” which appears in existing Section 341.1(c) would be changed to “permit applicant”. This proposed change is necessary to include a Project Administrator who may not be a direct employer of employees at the jobsite. The adjective “healthful” would be added to modify the existing nouns “employment” and “place of employment”. As non-substantive change, the adjective “safe” would be preserved, in a new location at the end of the sentence.

Section 341.1(d)(2).

New Section 341.1(d)(2) would direct the Division to furnish a permit applicant with a list of information or items the applicant must bring to the permit safety conference. This proposed change addresses complaints from permit applicants that they have been unable to adequately prepare for permit safety conferences. District offices that have provided written lists to permit applicants in the past have

received many fewer such complaints. In addition, Section 341.1(d)(2) would require the Division to make a reasonable effort to accommodate an applicant's scheduling needs.

Section 341.1(d)(3).

Newly designated as Section 341.1(d)(3), these three sentences pertaining to conduct of the safety conference are taken verbatim from the second paragraph of existing Section 341.1.

The last paragraph of existing Section 341.1(c) would be deleted. The problem of prompt notification of Division's decision whether or not to issue a permit is to be rectified by establishing a "regular system for the scheduling of safety conferences" as required in new Section 341.1(d)(3).

Section 341.1(e): General Requirements Applicable to Issuance of All Permits.

Section 341.1(e)(1) of the Proposed Rulemaking would allow the Division to issue a permit to a qualified applicant upon filing of a completed application form and compliance with all the prerequisites set forth therein, including payment. This provision is included in the Proposed Rulemaking to inform applicants about what to expect once they have filed an application.

Section 341.1(e)(2) would specify the information that will appear on a permit issued by the Division, including (A) the name of the permit holder; (B) the permit number; (C) the type of permit issued; (D) the date through which the permit shall remain valid; (E) payment information; (F) names of the Division staff involved in reviewing the application; and (G) the activities permitted by the permit. This information is also included to inform applicants what to expect once they have filed an application.

Section 341.1(f): Issuance of Project Permits for All Projects Other Than Erection of Tower Cranes.

The Proposed Rulemaking would revise existing Section 341.1(d) and renumber it as Section 341.1(f). As revised, Section 341.1(f) would present the general requirements for Project Permits that may be issued to Project Administrators.

Section 341.1(f) would state that a Project Administrator need obtain only one Project Permit, and would specify the work activities listed in Section 341.1(f)(1) through (f)(5). This statement is necessary to end past confusion about the expiration of single Project Permits.

Subsections (f)(1) through (f)(4) describe multiple work activities that may be encompassed in one Project Permit when the work is done at the same jobsite. For example, Section 341.1(f)(1) requires a single Project Permit for the construction or demolition of a building or structure over 36 feet high and the associated excavation work at the same site. This proposed change was necessary because a building or other structure three stories or more in height will generally have footings or foundations that are deeper than five feet, and it would not be reasonable to require two permits for essentially the same operation. Section 341.1(f)(2) requires a single Project Permit for the construction of specified structures and the erection of attendant scaffolding. Under Section 341.1(f)(3) a Project Administrator would need a single Project Permit for any project of demolition of specified structures at one site. Section 341.1(f)(4) would require taking out a single Project Permit for all or any combination of the activities listed in Subsections (f)(1), (f)(2) and (f)(3) at a single jobsite.

Section 341.1(f)(5).

Section 341.1(f)(5) would list conditions under which a single Project Permit may be issued for two or more jobsites located within different Division districts, as long as the work involves the installation or erection of essentially identical structures. The provision is adapted from existing subsections (d)(1) and (d)(5). The Division has in the past permitted Single Project Permits to be issued for relatively minor projects where identical equipment such as outdoor signs and communications towers are to be erected at multiple sites. The proposed Section 341.1(f)(5) is intended to preserve that practice, with strict guidelines that will not blur the lines between a Project Permit and an Annual Permit.

Section 341.1(f)(5)(A).

New Section 341.1(f)(5)(A) would list common “essentially identical structures” that would be subject to the provisions of Section 341.1(f)(5), namely: silos, outdoor signs, tanks or tank towers, and transmission or communication towers. This list is necessary to establish the scope of the provision for Project Permits for more than one jobsite, and to provide examples that act as guidelines for applying this provision to other structures not explicitly named.

Section 341.1(f)(5)(B).

New Section 341.1(f)(5)(B) would list common structures that may appear to be identical or nearly identical in basic design, but which are specifically excepted from the provision for Project Permits for more than one jobsite. Such projects, including bridges, dams, elevated highways, buildings and tower cranes, can be very complex projects, and site conditions could vary greatly from project to project. This list is necessary to establish the scope of the provision, and to provide examples that act as guidelines in applying this restriction to other structures not explicitly named.

Section 341.1(f)(5)(C).

New Section 341.1(f)(5)(C) would provide that the Division’s district office where the first project is located will issue a Project Permit for more than one jobsite. This is necessary to guide the Project Administrator seeking to obtain such a permit, and to prevent the phenomenon of “permit shopping” mentioned in the discussion of Section 341.1(a)(2) above.

Section 341.1(f)(5)(D).

New Section 341.1(f)(5)(D) would require a Project Administrator who has obtained a Project Permit for more than one jobsite to fulfill the notification requirements for Annual Permits, as set forth in Section 341.1(g)(2)(C), below. Such a requirement is necessary because allowing Project Permits for more than one jobsite, without separate safety conferences for each jobsite, would allow work to go on without the Division’s knowledge, and would deprive both the Division and the permit holder of the benefit of a site-specific safety conference.

Section 341.1(g): Issuance of Project Permits for Fixed Tower Cranes.

New Section 341.1(g) is adapted from existing Section 341.1(e). Existing Section 341.1(e) explains that only one permit is necessary for the erection, climbing and dismantling of a fixed tower crane. A

proposed amendment would add a title sentence that highlights the fact that such permits are Project Permits, as required in Section 341(c)(3). A second proposed amendment would require separate permits to be taken out for erecting, climbing or dismantling a tower crane, if the same employer does not perform all three functions. This second proposed change is necessary because the current wording could be misinterpreted to allow an employer to dismantle a tower crane without a prior safety conference with the Division. Finally, if a fixed tower crane is relocated to a new position on the same project, a new Project Permit is required. Requiring a new permit will afford the Division notice of the new work and will ensure that safety concerns specific to the re-erection of the tower crane are addressed.

Section 341.1(h): Issuance of Annual Permits.

Proposed Section 341.1(h) is adapted from existing Section 341.1(f). Existing Section 341.1(f) contains the conditions under which the present annual permits may be issued for work at one or more locations. New Section 341.1(h) substantially revises the existing provisions.

Section 341.1(h)(1).

Proposed Section 341.1(h)(1) contains the length of time an Annual Permit is valid, relocated from existing Section 341.1(f)(2) and fundamentally revised. The lifespan of an Annual Permit in existing Section 341.1(f)(2) is until the end of the calendar year the permit is issued, even if it is issued in December. The proposed Section 341.1(h)(2) makes all Annual Permits valid for one full year, running from the date of issuance until the same date the following year. This proposed change is necessary to make all Annual Permits last the same amount of time, and to end the current logjam in obtaining permits at the end of each calendar year.

Explanatory NOTE following Section 341.1(h)(1).

The new proposed explanatory Note following new Section 341.1(h)(1), gives the Division the flexibility to stagger the expiration dates in the first year following the effective date of the Proposed Rulemaking, to prevent the logjam described in proposed Section 341.1(h)(1) above from being carried over into the new system. If the Division finds it necessary to stagger expirations dates the first year, the expiration date would be for longer than one year, rather than shorter than one year, so as not to prejudice the Annual Permit holder.

Section 341.1(h)(2).

Existing Section 341.1(f)(2) defines the term of an annual permit as one calendar year. This provision is proposed to be revised and relocated to Section 341.1(h)(1) as described above.

Existing Section 341.1(f)(2) also contains the condition that the permit is valid for one year only when used by the same employer. This condition is proposed to be revised and relocated to new Section 341.1(h)(2)(A).

Section 341.1(h)(2)(A).

The proposed new Section 341.1(h)(2) would establish four conditions under which an Annual Permit may be issued to a Specialty Contractor, which are set forth in subsections (h)(2)(A) through (h)(2)(D).

New Section 341.1(h)(2)(A) is adapted from existing Section 341.1(f)(2), and like the existing provision would provide that the annual permit is valid only if used by the same employer. The proposed change is necessary because this condition would now be listed among three other conditions in proposed subsections (h)(2)(B), (C) and (D), and requires a separate subsection for clear reading.

Section 341.1(h)(2)(B).

New proposed Section 341.1(h)(2)(B) would require that the permit applicant can demonstrate that their safety program has procedures and work rules that cover all types of work covered by the Annual Permit. This new subsection is necessary to ensure compliance with the condition in Labor Code Section 6502, which provides that permits for two or more projects shall only be issued if the Division is satisfied that an adequate safety program has been developed for all projects.

Section 341.1(h)(2)(C).

New proposed Section 341.1(h)(2)(C) would contain a notification requirements for permit holders of Annual Permits, adapted from the notification requirements in existing Section 341.1(f)(3). The existing requirement calls for the permit holder to notify the district office “prior to the commencement of any work activity”. The wording of this condition has led to confusion in the past, because the permit holder may begin general site work on a project weeks or months before beginning any work activity requiring notification to the district office. The current wording also does not specify how much lead time “prior to the commencement of any work activity” is required when notifying the district office. The proposed Section 341.1(h)(2)(C) would make clear that notification to the district office must be made “at least 24 hours prior to” the permitted activity, and not to unrelated work on site; the proposed 24-hour lead time is reasonable for all parties.

Section 341.1(h)(3).

New Section 341.1(h)(3) would adopt verbatim the language in existing Section 341.1(f)(4), pertaining to renewal of annual permits by mail.

DOCUMENTS RELIED UPON

The Division did not rely on any technical, theoretical, or empirical study, report, or similar document in proposing the Proposed Rulemaking.

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated by reference in this proposed action.

REASONABLE ALTERNATIVES

The Division has determined that no alternative considered would be more effective in carrying out the purpose that underlies the proposed action, or would be as effective as and less burdensome to affected small businesses than the proposed action. Moreover, the Division did not consider a performance standard as a reasonable alternative for a regulation that sets forth the specific prerequisites for the issuance of permits.

EFFECT ON BUSINESSES

The proposed action will not result in a significant adverse economic impact on businesses. There are some indications that there will be savings to contractors other than Project Administrators, many of whom are small businesses. Those contractors have had to schedule and attend permit conferences to obtain permits for multiple projects around the State have reported significant time and travel costs. Under provisions of this proposed action, such contractors will obtain an annual permit at one permit conference in the Division's District Office closest to the business address of the contractor. The specialty contractor will then be able to renew the permit annually by mail.